

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN BRENT R. CROMLEY**, on March 16, 2005  
at 3:43 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Brent R. Cromley, Chairman (D)  
Sen. John Esp (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Trudi Schmidt (D)  
Sen. Carol Williams (D)

**Members Excused:** Sen. John Cobb (R)  
Sen. Duane Grimes (R)  
Sen. Dan Weinberg (D)

**Members Absent:** None.

**Staff Present:** Rita Tenneson, Committee Secretary  
David Niss, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 32, 3/9/2005; HB 556, 3/9/2005;  
HJ 1, 3/7/2005  
Executive Action: HB 32; HB 556; HJ 1; HB 457;  
HB 396; HB 737; HB 738

**HEARING ON HB 32****Opening Statement by Sponsor:**

**REP. JILL COHENOUR (D), HD 78**, opened the hearing on **HB 32**, Revise vital statistics statutes.

The bill updates vital statistics areas to conform with federal law, increasing the consistency and efficiency within the department. The department has a computer system. These changes make it easier for counties to have access to birth and death certificates.

**Proponents' Testimony:**

**Joyce Zahn, Department of Public Health and Human Services (DPHHS)**, thanked **REP. COHENOUR** for sponsoring the bill on behalf of the department. It is a housekeeping bill addressing several conflicts in the vital statistics law. It eliminates the need for county registers to retain triplicate copies of certificates if these are filed electronically. About 90% of the certificates are filed electronically. She, and two other supervisors from vital statistics, were present to answer questions.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. CROMLEY** asked **Ms. Zahn** if taking out the reference to sealing the records, on the bottom of page 2, was because that is provided for in separate section, 50-15-304. **Ms. Zahn** told him that line says, when a certificate is changed and the record is sealed, all the records in the counties and other locations are sent directly to the State office. There is currently a conflict in the statutes where it isn't clear all the records should be sent to the State office. **SEN. CROMLEY** asked about the last section of subsection 7 where it says, for sealing from inspection, (the language being stricken), was that because it is provided for elsewhere in the statute. **Ms. Zahn** told him it was in 50-15-304. This is changed to be consistent with 15-15-223. That section provides the original certificate of birth and the evidence of adoption. It lists the items that may call for a new certificate and is only subject to inspection upon a court order as provided by rule by the department.

**SEN. ESP**, referring to the bottom of page 2, line 30, asked **Ms. Zahn** why they didn't say forwarded within a couple days. Why

does it say immediately. **Ms. Zahn** told him immediately is something they need to do. With electronic filing, they can do this.

**Closing by Sponsor:**

**REP. COHENOUR** said immediately is possible now because of electronic recording. They do have access to it immediately so they can definitely forward that to the department. This should be done so we can keep consistency within the department.

**SEN. WILLIAMS** will carry the bill on the Senate floor.

**HEARING ON HB 556**

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 9.2}***

**Opening Statement by Sponsor:**

**REP. ART NOONAN (D), HD 73**, opened the hearing on **HB 556**, Revise medicaid fraud.

**REP. NOONAN** said this is a constituent and a housekeeping bill. It attempts to clarify medicaid fraud. **SEN. COBB** had a similar bill in a prior session. His bill was tabled because this couldn't be resolved because of a pending court case. The court case has now been resolved in favor of the constituent. This bill brings current law within what the court said the law should be. It clarifies the frame of mind of someone committing medicaid fraud, as well as clarifies under what type rules and regulations a person can be convicted of medicaid fraud.

**Proponents' Testimony:**

**David Vanio, Optometrist**, told the Committee he was charged with prosecution under the present medicaid fraud statute 45-6-3-13. He was not aware he could be prosecuted for violating departmental policies not written in the provider manual, statute, or administrative rule. The present statute says the mental state, to be convicted, is "knows or has reason to know." All criminal laws in the State of Montana have the mental state of "purposely or knowingly." The present medicaid fraud statute also has this mental state but, if you read it carefully, it says if one "purposely and knowingly submits claims." He didn't know of any other way to submit a medicaid claim without purposely and knowingly doing it. The criminal part of the statute is, knows and has reason to know, that one is not entitled to the money. This bill clarifies that the provider has to purposely or

knowingly send a false or misleading claim, not just a medicaid claim. The bill removes the know or reason to know mental stage which makes it in line with other criminal statutes. It is in line with the Montana Supreme Court case decision of November 2001, *State vs. Vanio*, where the Court said department policies are not enforceable unless they go through the Montana administrative procedure after NAPA. He urged support of the bill so other medicaid providers, in the State of Montana, will not have to defend themselves against the inequities in the present statute.

***{Tape: 1; Side: A; Approx. Time Counter: 9.2 - 16.2}***

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. SCHMIDT** asked if this was the same language as **SEN. COBB'S** bill in 2001. **REP. NOONAN** told her it was.

**SEN. CROMLEY** asked what happened to that bill. **REP. NOONAN** said it was tabled because the case was in court.

**SEN. SCHMIDT** asked if this resolves the situation with medicaid. **REP. NOONAN** told her he had discussions with the agency and he asked them to notify them if anything in the bill was wrong. So far he hasn't heard anything from them.

**Closing by Sponsor:**

**REP. NOONAN** thought the bill was important because when this was brought up before, the agency said they would change the law if the court case was won. This hasn't been done. Mr. Vanio had to define the case, spend his money to win the case, then request the law be corrected.

**SEN. COBB** will carry the bill on the Senate floor.

HEARING ON HJ 1

*{Tape: 1; Side: A; Approx. Time Counter: 16.2 - 22}*

Opening Statement by Sponsor:

**REP. EVE FRANKLIN (D)**, HD 24, opened the hearing on **HJ 1**, Support substance abuse prevention efforts.

**REP. FRANKLIN** was not available to present the bill, so **SEN. ESP** opened on **HJ 1**. It urges the Governor, Department of Corrections and DPHHS to continue efforts toward interagency cooperation for prevention services and to look at substance abuse. It came out of the Children and Family Health and Human Services Interim Committee.

Proponents' Testimony:

**Vicki Turner**, DPHHS, supported the bill and made herself available to answer questions.

**Don Hargrove**, **Montana Addiction Services Providers**, said it is a significant and timely resolution. The resolution documents the willingness of the Legislature to take a leadership position.

**Ali Bovington**, appearing on behalf of the **Attorney General and Department of Justice** rose in support. Attorney General McGrath said the meth problem in Montana is a top priority. This resolution encourages studies toward education, prevention, treatment and coordination between all the branches of government who deal with the meth problem, as well as other substance abuse problems within the State.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

**SEN. CROMLEY** told **REP. FRANKLIN** that on line 20 saying, "former Governor", he could think of at least two former Governors of this State. **REP. FRANKLIN** told him this would be former Governor Martz, who did hold a meth summit drawing on people from all over the State. **SEN. CROMLEY** asked if it would create problems with the bill if we considered her name. **REP. FRANKLIN** answered, no.

**SEN. O'NEIL** wanted to know if it would hurt the bill if the words, "support efforts to," were struck on page 2, line 5. **REP.**

**FRANKLIN** told him if the drug coordinator didn't survive the Legislative session, there would be other focal points where coordination might happen. **SEN. O'NEIL** wanted to know if all the focal points wouldn't be under Governor Schweitzer's office. **REP. FRANKLIN** answered, one would hope they would be.

*{Tape: 1; Side: A; Approx. Time Counter: 22 - 30}*

Closing by Sponsor:

**REP. FRANKLIN** thanked **SEN. ESP** for presenting her bill as she was tied up in Appropriations Committee. The bill is a policy statement about what they know needs to happen.

**SEN. SCHMIDT** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 32

Motion/Vote: **SEN. MOSS** moved that HB 32 BE CONCURRED IN. Motion carried unanimously. **SEN. WILLIAMS**, **SEN. GRIMES**, **SEN. WEINBERG**, and **SEN. COBB** voted aye by proxy.

**SEN. WILLIAMS** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 556

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 7.4}*

Motion/Vote: **SEN. O'NEIL** moved that HB 556 BE CONCURRED IN. Motion carried unanimously. **SEN. WEINBERG**, **SEN. COBB**, **SEN. WILLIAMS**, and **SEN. GRIMES** voted aye by proxy.

**SEN. COBB** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HJ 1

*{Tape: 1; Side: B; Approx. Time Counter: 7.4 - 8.7}*

Motion: **SEN. SCHMIDT** moved that HJ 1 BE CONCURRED IN.

Motion/Vote: **SEN. CROMLEY** moved that on LINE 20, PAGE 1 STRIKE "THE FORMER", AND FOLLOWING GOVERNOR, INSERT "JUDY MARTZ" DO PASS. Motion carried unanimously. **SEN. GRIMES**, **SEN. COBB**, and **SEN. WEINBERG** voted aye by proxy.

**Motion:** SEN. O'NEIL moved that HJ 1 BE AMENDED BY DELETING "SUPPORT EFFORTS TO" ON PAGE 2 LINE 5..

**Discussion:** SEN. O'NEIL thought the governor should be the person coordinating the efforts.

SEN. MOSS thought Governor Schweitzer could support the efforts, but he would not be the person coordinating those. SEN. SCHMIDT agreed.

SEN. O'NEIL said the governor is the boss. This shows who will be delegating the efforts. SEN. ESP said we are talking about two different elected officials, the Attorney General and the Governor. The bill reads consistently the way it is.

**Vote:** Motion failed 1-8 with SEN. O'NEIL voting aye. SEN. COBB, SEN. GRIMES, and SEN. WEINBERG voted no by proxy.

**Motion/Vote:** SEN. SCHMIDT moved that HJ 1 BE CONCURRED IN AS AMENDED. Motion carried 8-1 by voice vote with SEN. ESP voting no. SEN. WEINBERG, SEN. GRIMES, and SEN. COBB voted aye by proxy.

**EXECUTIVE ACTION ON HB 457**

*{Tape: 1; Side: B; Approx. Time Counter: 8.7 - 13.8}*

The Committee was given written testimony from John W. Flink, Vice President, Montana Hospital Association (MHA), supporting HB 457. Mr. Flink was unable to attend the hearing on the bill, March 11, due to a scheduling conflict.

**EXHIBIT** (phs58a01)

**Motion:** SEN. ESP moved that HB 457 BE CONCURRED IN.

**Discussion:** SEN. WILLIAMS had an amendment, HB045701.asb. After the hearing, she had made some calls to Missoula to people in the radiology department. She said REP. NOENNIG was okay with the amendment.

**EXHIBIT** (phs58a02)

**Motion/Vote:** SEN. WILLIAMS moved that AMENDMENT HB045701.asb BE ADOPTED. Motion carried unanimously. SEN. GRIMES, SEN. COBB and SEN. WEINBERG voted aye by proxy.

**Motion/Vote:** SEN. ESP moved that AMENDMENT HB045702.asb BE ADOPTED. Motion carried unanimously. SEN. GRIMES, SEN. COBB and SEN. WEINBERG voting aye by proxy.

**EXHIBIT** (phs58a03)

SEN. ESP had amendment HB045705.asb. SEN. ESP asked Courtney Funk if it was necessary to make a requirement that either a physician or somebody trained in advanced cardiac life support would be available in the facility if a radiologist assistant did this procedure. Ms. Funk thought it was a good amendment. It was the intent of the State Board of Radiologic Technologists to have someone trained in advanced cardiac life support immediately available, in the facility, when contrast is administered by a radiologic technologist or a radiologist assistant.

**Motion/Vote:** SEN. ESP moved that AMENDMENT HB045704.asb BE ADOPTED. Motion carried unanimously. SEN. GRIMES, SEN. COBB and SEN. WEINBERG voted aye by proxy.

**EXHIBIT** (phs58a04)

SEN. SCHMIDT asked Ms. Funk if she found anything different now with the three new amendments. Ms. Funk answered that she is definitely more comfortable with the bill. These amendments help clarify what the Board was trying to accomplish. SEN. SCHMIDT asked if it caused restrictions to the radiology assistants. Ms. Funk said it is a little more of a restriction, as it requires that someone trained in advanced cardiac life support must be immediately available in the facility. In the past they did not have that. The Board feels this is a very good limitation to place on radiologic technologists.

**Motion/Vote:** SEN. ESP moved that HB 457 BE CONCURRED IN AS AMENDED. Motion carried unanimously. SEN. GRIMES, SEN. COBB and SEN. WEINBERG voted aye by proxy.

SEN. MOSS will carry the bill on the Senate floor.

**EXECUTIVE ACTION ON HB 396**

*{Tape: 1; Side: B; Approx. Time Counter: 13.8 - 25.7}*

**Motion/Vote:** SEN. ESP moved AMENDMENT HB039601.and BE ADOPTED. Motion carried unanimously. SEN. COBB, SEN. GRIMES and SEN. WEINBERG voted aye by proxy.



**EXHIBIT** (phs58a05)

**Motion/Vote:** SEN. ESP moved that AMENDMENT HB039604.adn BE ADOPTED. Motion carried unanimously. SEN. COBB, SEN. GRIMES and SEN. WEINBERG voted aye by proxy.

**EXHIBIT** (phs58a06)

SEN. WILLIAMS asked why the amendment changed "student" to "pupil."

Mr. Niss told her the language is used throughout the section so it was for consistency.

Mr. Niss had amendment HB039602.adn. He said SEN. O'NEIL requested the amendment a week ago to strike "immediate", which has already been done in SEN. ESP's amendment, and insert in lieu of "immediate", "reasonably prompt". SEN. O'NEIL said he didn't want to move that amendment.

**EXHIBIT** (phs58a07)

SEN. O'NEIL gave the Committee copies of amendment HB039603.adn. The purpose of his amendment was to make the requirement for the permission slip permanent, until a change comes, rather than it expiring at the end of every year.

**EXHIBIT** (phs58a08)

SEN. MOSS reminded the Committee that REP. BECKER had testified the need to annually update the permission slips because children grow and their weight changes. The weight somehow affects the dosage of the medication. She thought it was a safety measure for the school to have these records maintained on a yearly basis.

SEN. WILLIAMS agreed. She thought it was also a liability issue if the records and dosages aren't current.

SEN. SCHMIDT agreed with SEN. MOSS and SEN. WILLIAMS. She thought it was too confusing for schools and it would be very clear that every year the parents have to take responsibility for letting the school know what the medication is.

SEN. O'NEIL told the Committee one of the purposes of his amendment was if, in the next year, the parent hadn't gotten around to signing the permission slip, and the kid had an attack,

the previous authorization would still be good and the kid could be given their medication.

**SEN. SCHMIDT** asked **SEN. O'NEIL** if he was saying, if the medication doesn't change, they don't need to go back to the school the next year. **SEN. O'NEIL** answered right, they don't have re-do it if it is still the same, but if the dosage does change, then they have to do it.

**SEN. CROMLEY** was uncomfortable with the amendment. He would rather put the responsibility on the parents.

**SEN. O'NEIL** withdrew his amendment.

**Motion/Vote:** **SEN. ESP** moved that HB 396 BE CONCURRED IN AS AMENDED. Motion carried unanimously. **SEN. GRIMES**, **SEN. COBB** and **SEN. WEINBERG** voted aye by proxy.

**SEN. SQUIRES** will carry the bill on the Senate floor.

#### EXECUTIVE ACTION ON HB 737

*{Tape:2; Side: A; Approx. Time Counter: 0 - 20.8}*

**Motion:** **SEN. MOSS** moved that HB 737 BE CONCURRED IN.

**Discussion:** **SEN. ESP** had an amendment from **SEN. GRIMES**, HB73701.asn.

#### EXHIBIT (phs58a09)

**SEN. ESP** didn't think physician assistants(PAs) should be able to perform abortions. **SEN. SCHMIDT** agreed with him. She said she knew the education level of those people and was not willing to have them form this procedure.

**SEN. MOSS** requested more information on physician assistants and their technical knowledge in abortion procedures. **Jeannie Warsech, Executive Director, Board of Medical Examiners**, under the **Department of Labor and Industry**, told her the educational requirements, discussed at the hearing, aren't very different than physician's. The PA program is accredited. It requires two to four years, depending upon the accreditation, for medical. The PA is supervised by a physician. The procedures they perform are based upon their education, skills and training by the physician who they work for.

*{Tape: 2; Side: A; Approx. Time Counter: 20.8 - 29}*

**SEN. WILLIAMS** said **REP. MCNUTT** had given the Committee a court case and it had already been decided. We can do **REP. ESP'S** amendment, and be back in court again, or we can leave the bill the way it came to us.

**SEN. CROMLEY** understood that, whether we pass the bill or not, PAs will be able to perform the abortions. If we pass the amendment, we will put something on the books. This is why he would vote against the amendment.

**SEN. SCHMIDT** said she had asked questions when the Committee heard the bill. PAs can have a bachelor's degree in anything, and she had used Forestry as her example. Then PAs have two years medical training, with 100 hours in the two years. This was her objection.

**SEN. ESP** said the amendment would leave the statute the way it is now, it shouldn't give anybody anything to sue about.

**SEN. SCHMIDT** wanted to know if the purpose of this was to comply with the court case. **SEN. CROMLEY** said if we pass this or not, it wouldn't make any difference, just that the statute would look wrong.

**Motion/Vote:** **SEN. ESP** moved that HB 737 BE AMENDED WITH HB073701.ADN. Motion carried 5-4 by roll call vote with **SEN. CROMLEY**, **SEN. MOSS**, **SEN. WEINBERG**, and **SEN. WILLIAMS** voting no.

**Motion/Vote:** **SEN. ESP** moved that HB 737 BE CONCURRED IN AS AMENDED. Motion carried 6-3 by voice vote with **SEN. MOSS** voting no and **SEN. WEINBERG**, and **SEN. WILLIAMS** voting no by proxy.

#### EXECUTIVE ACTION ON HB 738

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 7.2}*

**Motion:** **SEN. SCHMIDT** moved that HB 738 BE CONCURRED IN.

**Motion:** **SEN. CROMLEY** moved that HB 738 BE AMENDED WITH HB073801.ADN.  
[EXHIBIT](#)(phs58a10)

**Discussion:** **Mr. Niss** explained the amendment was a composite of a lot of different ideas coming out of discussion. Methodology

was left alone because it addresses something much broader than just whether a provider is making enough money. He included **SEN. GRIME'S** list of considerations as a new subsection 5, beginning on page 4, after line 1. This is a list of the duties of the commission, what they have to do and what they have to consider. It isn't directly associated with the methodology used by the commission to conduct the entire study.

**SEN. SCHMIDT** asked **Jani McCall** if she had any input on this. She said they helped in designing the amendments and the amendments strengthen the bill. They thought **SEN. O'NEIL'S** recommendations, in putting some parameters around the members of the commission, is good. **SEN. SCHMIDT** asked her if she was okay with amendment 7. **Ms. McCall** answered, yes.

**SEN. SCHMIDT** asked if anyone else present, with an interest in the bill, would like to comment. **Jim Fitzgerald, Executive Director, Intermountain Children's Home**, said the amendments strengthened the bill.

**Motion/Vote:** **SEN. CROMLEY** moved that **AMENDMENT HB073801.adn** BE **ADOPTED**. Motion carried unanimously by voice vote.

**SEN. O'NEIL** asked how the Legislators would be appointed. He didn't want the department to appoint them. **Mr. Niss** said the bill started out, and there was testimony during the hearing, that it would probably be the director doing it.

**Motion:** **SEN. O'NEIL** moved that **HB 738** BE **AMENDED SO THAT THE SENATE MAJORITY LEADER AND THE HOUSE MINORITY LEADER APPOINT THEIR RESPECTIVE LEGISLATORS TO THE COMMISSION**.

**Discussion:** **SEN. ESP** resisted the amendment. He didn't have a problem with the department appointing the people, as they would know the people interested in the issues. He understood **SEN. O'NEIL'S** concerns, but was not sure the leadership in those respective bodies would understand who may or may not have an interest in the issues.

**SEN. O'NEIL** had enough comfort in the leaders to expect them to listen to the department. He thought the commission should reflect some of the philosophy of the respective parties and bodies to some degree. He said the leaders should know who has an interest in being on the committee.

**SEN. WILLIAMS** thought that was exactly what the department didn't need, political parties messing with their job. They need to do

their job. The Legislature should have a role, but appointments should come out of the department.

**SEN. MOSS** added that the title of the bill was an act requiring DPHHS to create an advisory commission. The title, alone, acknowledges the wisdom and responsibility of the department to do this.

**Vote: Motion failed 1-8 by voice vote with SEN. O'NEIL voting aye and SENS. MOSS, WEINBERG, AND WILLIAMS voting no by proxy.**

**SEN. ESP** stated that he reluctantly supported the bill. He had some concerns about another commission taking time away from doing the work. He hoped the department and the people involved, when they come to work, come to work.

**SEN. CROMLEY** said it makes a lot of sense. He hoped it would be effective.

**Motion/Vote: SEN. SCHMIDT moved that HB 738 BE CONCURRED IN AS AMENDED. Motion carried unanimously. SEN. GRIMES, SEN. COBB and SEN. WEINBERG voted aye by proxy.**

**SEN. MOSS** will carry the bill on the Senate floor.

***{Tape: 2; Side: B; Approx. Time Counter: 7.2 - 25.4}***

**ADJOURNMENT**

Adjournment: 5:35 P.M.

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SEN. BRENT R. CROMLEY, Chairman

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RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

**EXHIBIT ([phs58aad0.TIF](#))**